

DEPARTMENT OF PUBLIC SAFETY

Adoption of Subtitles 1, 2, and 3 of Title 23
Hawaii Administrative Rules

March 22, 2000

SUMMARY

1. Chapter 23-1, Subtitle 1, Hawaii Administrative Rules, entitled "General Provision" is adopted.
2. Chapter 23-2, Subtitle 1, Hawaii Administrative Rules, entitled "Provisions for the Adoption, Amendment, Repeal of **Rules**" is adopted.
3. Chapter 23-3, Subtitle 1, Hawaii Administrative Rules, entitled "Provision for Declaratory Relief" is adopted.
4. Chapter 23-4, Subtitle **1**, Hawaii Administrative Rules, entitled "Provision for Administrative Relief" is adopted.
5. Chapter 23-10, Subtitle 1, Hawaii Administrative Rules, entitled "Suitability Determination for Staff Members **and Prospective** Staff Members" is adopted.
6. Chapter 23-100, Subtitle 2, Hawaii Administrative Rules, entitled "Visits" is adopted.
7. Chapter 23-101, Subtitle 2, Hawaii Administrative Rules, entitled "Contraband" is adopted.
8. **Chapter 23-200**, Subtitle '3, Hawaii Administrative Rules, entitled "Regulation of Controlled Substances" is adopted.
9. Chapter 23-201, Subtitle 3, Hawaii Administrative Rules, entitled "Regulated Chemicals for the Manufacture of Controlled Substances" is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 23

DEPARTMENT OF PUBLIC SAFETY

SUBTITLE 1

ADMINISTRATION

CHAPTER 1

GENERAL PROVISION

523-1-1	Definitions
\$23-1-2	Purpose
\$23-1-3	Applicability
\$23-1-4	Department's programs
523-1-5	Director's authority
\$23-1-6	Inmate control

\$23-1-1 Definitions; As used in this chapter:
"Agency" means ~~any office~~, board, or commission of the state government ~~which~~ is assigned to the department for administrative purposes only.

"Department" means the department of public safety.

"Director" means the director of the department or the director's designee.

"Division" means a ~~major~~ organizational segment of the department.

"Program" means a combination of departmental resources and activities designed to achieve an objective or objectives.

"Rules" shall be as defined in section 91-1(4), Hawaii Revised Statutes. [Eff **APR 15 2000**]
(Auth: HRS **\$353C-2**) (Imp: HRS ~~SS~~26-38, 353C-2)

523-1-2 Purpose. The administrative rules in title 23 implement the programs and policies of the department and its agencies. [Eff **APR 15 2000**]

(Auth: HRS **\$353C-2**) (Imp: HRS **\$26-35, 26-38, 353C-2**)

\$23-1-3 Applicability. Chapters 23-1 to 23-99 shall govern all agencies, programs, practices, and procedures of the department. [Eff **APR 15 2000**]
(Auth: HRS **\$353C-2**) (Imp: HRS **\$26-38, 353C-2**)

\$23-1-4 Department's programs. Policies and procedures for specific programs may be developed and implemented by the division responsible for that program with director's approval.
[Eff **APR 15 2000**] (Auth: HRS **\$353C-2**) (Imp: HRS **\$26-35, 26-38, 353C-2**)

\$23-1-5 Director's authority. The director may delegate authority or functions to any subordinate officer or employee of the department. Where authority is delegated by the director, the director shall retain the final authority to make exceptions to and approve or overrule any decision or action taken by the delegate. [Eff **APR 15 2000**] (Auth: HRS **\$353C-2**) (Imp: HRS **\$26-38, 26-39, 353C-3, 353C-4**)

\$23-1-6 Inmate control. Nothing in Title 23 shall restrict the department's authority or ability to control, limit, restrict, or regulate the activities of inmates. [Eff **APR 15 2000**] 3 (Auth: HRS **\$353C-2**) (Imp: HRS **\$353 C-2**)

HAWAII ADMINISTRATIVE RULES

TITLE 23

DEPARTMENT OF PUBLIC SAFETY

SUBTITLE 1

ADMINISTRATION

CHAPTER 2

PROVISIONS FOR THE ADOPTION, AMENDMENT, OR
REPEAL OF RULES

§23-2-1	Definitions
§23-2-2	Purpose
§23-2-3	Format and certification of petition
§23-2-4	Rule relief

§23-2-1 Definitions. As used in this chapter:

"Person" includes individuals, partnerships, corporations, associations, or organizations of any character, except for the department.

"Petition" means a properly documented submission of information by a person requesting the adoption, amendment, or repeal of a rule.

"Relief" means the process for the adoption, modification, or repeal of any rule in favor of the petitioner.

"Rule" herein does not include policies and procedures, or guidelines, or other regulations not within the meaning of rules as defined in section 91-1(4), Hawaii Revised Statutes.

[Eff **APR 15 2000**] (Auth: HRS §353C-2) (Imp:
HRS §§26-38, 353C-2)

§23-2-2 Purpose. This chapter shall govern all proceedings brought before the department for the adoption, modification, or repeal of any administrative rule of the department.

[Eff **APR 15 2000**] (Auth: H R S §353C-2)
HRS §§91-3, 91-6)

§23-2-3 Format and certification of petition.

(a) Any interested person may submit, pursuant to section 91-6, Hawaii Revised Statutes, a signed petition either in person or by mail to the department requesting the adoption, amendment, or repeal of rules. The petition shall be legibly written or typed, identifiable by name, address, and zip code.

(b) The petition shall set forth the text of the:

- (1) Rule to be repealed; proposed rule sought to be adopted; or existing rule sought to be amended, together with the petition; and
- (2) The facts or circumstances giving rise to the petition to include but not limited to:
 - (A) The petitioner's interest and reasons for the petition;
 - (B) The necessity for rule relief;
 - (C) The anticipated effects or impact of the rule relief;
 - (D) Questions or issues raised by the rule relief; and
 - (E) The petitioner's position or contentions with respect to questions or issues raised.

(c) The department may require a petitioner to submit a statement or memorandum of additional facts clarifying a specific factual issue which will aid the department in its consideration of what action to take on a petition.

(d) The department may refuse to consider the petition where:

- (1) The petition is not supported by a memorandum of authorities;
- (2) The petition is deemed frivolous;
- (3) The matter is not within the department's jurisdiction;
- (4) The petition is based on hypothetical or speculative facts;
- (5) A controversy of material fact exists which needs to be resolved before any rule relief may be **considered** or granted; or

(6) The petition would be more appropriately brought as a grievance.

(e) Unless otherwise provided, all petitions shall be filed with the department.

[Eff **APR 15 2000**] (Auth: HRS §353C-2) (Imp: HRS §91-6)

§23-2-4 Rule relief. Upon the filing of the petition, the department within thirty days shall either deny the petition in writing, stating the reasons for the denial, or initiate proceedings in accordance with section 91-3, Hawaii Revised Statutes.

[Eff **APR 15 2000**] (Auth: HRS §353C-2) (Imp: HRS §§91-3, 91-6)

HAWAII ADMINISTRATIVE RULES

TITLE 23

DEPARTMENT OF PUBLIC SAFETY

SUBTITLE 1

ADMINISTRATION

CHAPTER 3

PROVISIONS FOR DECLARATORY RELIEF

§23-3-1	Definitions
§23-3-2	Purpose
§23-3-3	Format and certification of petition
§23-3-4	Declaratory relief

§23-3-1 Definitions. As used in this chapter:

"Party" means the department and petitioner.

"Person" means individuals, partnerships, corporations, associations, or organizations of any character, except the department.

"Petition" means a properly documented submission of information by a person seeking relief.

"Relief" means the department's declaration as to whether a rule or order of the department, or a statute which the department is required to administer or enforce, applies to a factual situation.

[Eff **APR 15 2000**] (Auth: HRS §353C-2) (Imp: HRS §§91-8, 353C-2)

§23-3-2 Purpose. This chapter shall govern all proceedings brought before the department which are intended to obtain a declaratory relief of the applicability of any rule, or order of the department, or any statute the department is mandated to administer or enforce with respect to a factual situation; provided that order as used herein does not include sanctions imposed on inmates pursuant to

departmental regulations. [Eff **APR 15 2000**]
(Auth: HRS §353C-2) (Imp: HRS §91-8)

§23-3-3, Format and certification of petition.

(a) Any interested person may submit a signed petition either in person or by mail to the department for a declaratory order as to the applicability of any statutory provision or of any rule or order of the department. The petition shall be legibly written or typed, identifiable by name, address, and zip code.

(b) The petition shall set forth the text of the:

- (1) Nature of the petitioner's interest and reason for submittal;
- (2) Identification of the specific statutory provision, order, rule in question; and
- (3) Statement of the position or contention of the petitioner, or a memorandum of authorities, including legal authorities, in support of such position or contention.

(c) The petitioner may be required to submit a statement or memorandum of additional facts clarifying a specific factual issue which will aid the department in its consideration for declaratory relief.

(d) The department may refuse to consider the petition where:

- (1) The petition is not supported by a memorandum of authorities;
- (2) The petition is deemed frivolous;
- (3) The matter is not within the department's jurisdiction;
- (4) The petition is based on hypothetical or speculative facts;
- (5) Any controversy of material fact exists which needs to be resolved by the parties before any relief may be considered or granted; or
- (6) The petition would be more appropriately brought as a grievance.

(e) Unless otherwise provided, all petitions shall be filed with the department.

[Eff **APR 15 2000**] (Auth: HRS §353C-2) (Imp: HRS §91-8)

§23-3-4 Declaratory relief. (a) Upon receipt of a petition ~~for declaratory relief~~, the department within thirty days shall notify the petitioner in writing whether or not to proceed with the relief.

(b) If it is determined by the department that a genuine controversy of material fact exists within the petition, the department shall:

- (1) Issue a declaratory order within sixty days from the date of receipt of the petition;
- (2) Dismiss the petition for declaratory relief;
or
- (3) **Allow** its conversion to a petition for rule relief proceedings pursuant to section 91-6, Hawaii Revised Statutes, or contested case proceedings, pursuant to section 91-9, Hawaii Revised Statutes.

(c) If the agency decides not to proceed, it shall notify the petitioner in writing that the ~~petition is denied~~ and give reasons for the denial
[Eff **APR 15 2000**] (Auth: HRS **§353C-2**) (Imp:.
HRS §91-8)

HAWAII ADMINISTRATIVE RULES

TITLE 23

DEPARTMENT OF PUBLIC SAFETY

SUBTITLE 1

ADMINISTRATION

CHAPTER 4

PROVISIONS FOR ADMINISTRATIVE RELIEF

§23-4-1	Definitions
§23-4-2	Purpose
§23-4-3	Format and certification of petition
§23-4-4	Individual representing party permitted
§23-4-5	Notice of hearing
§23-4-6	Extensions of time
§23-4-7	Motions
§23-4-8	Powers of hearing officer in conducting hearings
§23-4-9	Disqualification of hearing officer
§23-4-10	Ex parte communications
§23-4-11	Rights of parties
§23-4-12	Recording of proceedings
§23-4-13	Decision

§23-4-1 Definitions. As used in this chapter:
"Hearing officer" means a person, not interested in the outcome of the matter, who is authorized by the director to conduct hearings or render decisions, or both, on any contested case or controversy within the department's jurisdiction.

"Party" means:

- (1) The department, if it participates in a proceeding;
- (2) Each person named in the proceeding; and
- (3) Any interested or aggrieved person permitted or entitled to participate in a proceeding before the department in a capacity other than a witness..

"Person" includes individuals, partnerships, corporations, associations, or organizations of any character, except for the department.

"Petition" means a properly documented submission of information by a person seeking relief.

"Relief" means the resolution of any contested matter within the department's jurisdiction in favor of the petitioning party. [Eff **APR 15 2000**]

(Auth: HRS §353C-2) (Imp: HRS §353C-2)

§23-4-2 Purpose. This chapter shall govern all administrative hearing proceedings before the department which are intended to obtain relief in a contested case, provided that a contested case does not include any adjustment, disciplinary, grievance, classification, or any other hearing decision.

[Eff **APR 15 2000** 1 (Auth: HRS §353C-2) (Imp: HRS §91-9)]

§23-4-3 Format and certification of petition.

(a) Any interested person may petition for an administrative relief hearing with the department either in person or by mail. The petition shall be legibly written or typed to include the following:

- (1) The first page of every petition shall set forth the name, full address, and phone number of the petitioner;
- (2) The petition shall set forth the text of the:
 - (A) Statement of relief requested and the reasons therefore; and
 - (B) Identification of the specific statutory provisions, department order, or rule in question; and
- (3) The last page of every petition shall be signed in ink by the petitioner or the **petitioner's** authorized representative. This signature shall constitute certification that the person signing the petition has read the petition and that to the best of the person's knowledge, the petition is true or has good grounds to support it.

(b) Unless otherwise provided, all petitions shall be assigned a document number and filed with the department.

(c) Upon filing of the petition, the department within twenty days shall determine whether or not to proceed with a hearing.

(d) If the department decides not to proceed, it shall provide the petitioner with a written notice of the determination not to proceed and the reasons therefore. The petitioner may request the department to reconsider the determination, or may pursue judicial remedies.

(e) If the department decides to proceed, it shall set the matter for further proceedings before a department hearing pursuant to this chapter.

[Eff **APR 15 2000**] (Auth: HRS §353C-2) (Imp: HRS §91-9)

§23-4-4 Individual representing party permitted.

When a party's authorized representative appears in a hearing proceeding or signs a petition submitted to the department or a hearing officer, that shall signify that the representative is authorized to so act. The representative, however, may be required by the department or hearing officer to furnish proof of authority to act on a party's behalf.

[Eff **APR 15 2000**] (Auth: HRS §353C-2) -(Imp: HRS §91-9)

523-4-S Notice of hearing.

(a) Upon determination by the department to proceed with a hearing, the department shall give written notice to all parties of the hearing by registered or certified mail with return receipt at least fifteen days prior to the hearing date to include:

- (1) The date, time, and place of the hearing;
- (2) The legal authority under which the hearing is held;
- (3) The statutory provisions, rules, or order in question;
- (4) The issues involved and the facts alleged by the department in support of the allegations; and

- (5) Notification to all parties of their rights to retain counsel or substitutes pursuant to section 91-9, Hawaii Revised Statutes.

(b) If the process to serve mail is refused by a party, or the department is unable to ascertain the address, or locate the party, a public notice shall be issued in a newspaper of general circulation **announcing** the new hearing date. Unless otherwise notified prior to the new ~~hearing date~~, the petition shall be nullified. [Eff **APR 15 2000**] (Auth: HRS §353C-2) (Imp: HRS 591-9.5)

§23-4-6 Extensions of time. (a) The hearing officer may:

- (1) Approve a stipulation between parties continuing the hearing; and
(2) Upon motion by a party, for good cause shown as provided in section 23-4-7, continue the hearing. [Eff **APR 15 2000** 3 (Auth: HRS §353C-2) (Imp: HRS §91-9)]

§23-4-7 Motions. (a) An application for an order shall be made by motion, which, except during a hearing, shall be in writing and state the grounds for the application and the order sought.

(b) Motions referring to facts not of record shall be supported by affidavits, and if involving a question of law, by memorandum in support.

(c) Except for a motion entitled to be heard ex parte, all motions shall be accompanied by a notice of hearing. Unless otherwise directed by the hearing officer, the motion and notice shall be served upon all parties not less than seventy-two hours before the hearing, and the opposing parties shall serve any counter affidavits and memorandum in opposition not less than twenty-four hours before the hearing.

(d) Motions shall be filed with the department except that after a petition has been transferred to the hearing officer, all motions shall be filed with, and decided by the hearing officer.

[Eff **APR 15 2000**] (Auth: HRS §353C-2) (Imp: HRS §91-9)

§23-4-8 Powers of hearing officer in conducting hearings. (a) The hearing officer, in conducting a hearing, may:

- (1) Issue notices of hearings and appearance of parties;
- (2) Examine witnesses;
- (3) Rule upon offers of proof, receive relevant evidence, and exclude irrelevant evidence or restrict questioning or testimony;
- (4) Regulate the manner of any examination to prevent unnecessary harassment, intimidation, or embarrassment of any witness or party;
- (5) Remove disruptive individuals;
- (6) Hold conferences;
- (7) Rule on motions and dispose of procedural requests;
- (8) Certify a question to the agency for the agency's consideration;
- (9) Submit in writing a report or recommended decision together with the findings of facts and conclusions of law and a recommended order to the agency for consideration;
- (10) Render a final decision when authorized by the director or by rule; and
- (11) Dispose of any matter that normally arises in the course of the proceedings and take action authorized by chapter 91, Hawaii Revised Statutes, or any other related laws administered by the department.

(b) Nothing in this section may prevent the hearing officer to suspend, postpone, or terminate the hearing by default. [Eff APR 15 2000] (Auth: HRS §353C-2) (Imp: HRS §91-9)

§23-4-9 Disqualification of hearing officer.

(a) No matter shall be heard by the hearing officer who:

- (1) Has any pecuniary interest in the matter;
- (2) Is related within the third degree by blood or marriage to any party in the proceeding; or
- (3) Has participated in any pre-proceeding investigation of the matter, or in

developin; evidence to be introduced at the proceeding, or in making the decision, or taking the action challenged in the proceeding.

(b) The hearing officer affected by the categories in subsection (a) shall be disqualified from hearing the matter, either on own motion or of any party. **Any** motion to disqualify the hearing officer shall be decided prior to the hearing.

[Eff **APR 15 2000**] (Auth: HRS §353C-2) (Imp: HRS §91-13)

§23-4-10 Ex parte communications. (a) In any ~~proceedings before the department, no party or~~ representative of a party shall **communicate** with the hearing officer concerning the merits of the case.

(b) It shall be improper for any person interested in a proceeding to seek to influence the judgment of any member of the department or hearing officer designated.

(c) It shall be improper for a member of the department to:

- (1) Disclose or reveal to any other member of the department or hearing officer designated, the contents of any investigatory, department prepared report concerning the matter the department member or hearing officer is designated to hear and decide; or
- (2) Furnish the report or copy thereof to any department member or hearing officer designated, except where authorized by law.

[Eff **APR 15 2000**] (Auth: HRS §353C-2) (Imp: HRS §91-13)

§23-4-11 Rights of parties. (a) The parties shall have an opportunity to:

- (1) Present oral or documentary evidence;
- (2) Examine the case record as well as all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing;

- (3) Present the case independently or with the aid of others including legal counsel;
- (4) Bring witnesses, including language interpreters;
- (5) Establish all pertinent facts and circumstances;
- (6) Advance any arguments appropriate to the issue being heard without undue interference; and
- (7) Question or refuse any testimony or evidence, and to confront and cross examine witnesses.

(b) The parties by stipulation may modify or waive any **proceeding** procedures prior to and during the hearing.

(c) The parties by stipulation, agreed settlement, consent order, or default may informally dispose of the case in question prior to and during the hearing proceedings. [Eff **APR 15 2000**]
 (Auth: HRS §353C-2) (Imp: HRS §§91-9, 91-10)

§23-4-12 Recording of proceedings. (a) The official records of proceedings shall include materials prescribed in section 91-9(e), Hawaii Revised Statutes.

(b) Records of proceedings requested for the purposes of rehearing or court review, may be transcribed.

(c) The records transcribed shall not include matters outside the record of proceedings.
 [Eff **APR 15 2000** 1 (Auth: HRS §353C-2) (Imp: HRS §91-9)

§23-4-13 Decision. (a) A final decision shall not be rendered by the department prior to the hearing and examination of all evidence unless the decision is made in the form of a proposal which is subject to the following conditions:

- (1) That the proposed decision contains a statement of reasons for the decision, including the determination of issues of fact or law necessary;

- (2) That the proposal is served to the party seeking relief; and
- (3) That an opportunity is afforded to the party to file oral or written exceptions and to controvert the proposal.

(b) A final decision shall be rendered in writing by the department to the affected party within one hundred twenty calendar days from the date of request for a hearing. The exception is when the hearing is continued or the record is held open wherein the time limit shall be extended only for the period of the continuance. The decision shall contain:

- (1) The findings of fact and conclusions;
- (2) Any filed proposed findings of fact and ruling on the proposed finding; and
- (3) A statement concerning the petitioner's right to judicial review.

[Eff **APR 15 2000**] (Auth: HRS §353C-2)
(Imp: HRS §§91-11, 91-12)

HAWAII ADMINISTRATIVE RULES

TITLE 23

DEPARTMENT OF PUBLIC SAFETY

SUBTITLE 1

ADMINISTRATION

CHAPTER 10

SUITABILITY DETERMINATIONS FOR
STAFF **MEMBERS** AND PROSPECTIVE STAFF MEMBERS

§23-10-1	Definitions
§23-10-2	General rule
§23-10-3	Staff member or prospective staff member to provide information
§23-10-4	Fingerprint requirement
§23-10-5	Use of criminal history records results
§23-10-6	Suitability determination
§23-10-7	Denial or termination of employment
§23-10-8	Administrative review
§23-10-g	Appeal to the state civil service commission
§23-10-10	Implementation procedures and instructions

§23-10-1 Definitions. As used in this chapter:
"Affected individual" means the person about whom
a Federal Bureau of Investigations (FBI)
identification record pertains.

"Arrest records" means criminal history
information obtained from sources other than the FBI
pertaining to arrests for alleged criminal behavior.

"Clean criminal history record" means that a
person's criminal record check shows no indication of
criminal behavior.

"Conviction" means a final determination of
guilt, whether by plea of the accused in open court,
by verdict of the jury, or by decision of the court,
as defined by section **831-3.2**, Hawaii Revised

Statutes, or as the same may be amended and shall include, a judicial, military, or law enforcement judgment, verdict, or adjudicatory finding that an individual has committed an offense, where such judgment, verdict, or finding is still valid.

"Criminal conviction record" means criminal history information obtained from sources other than the FBI pertaining to a person's conviction of a crime.

"Criminal history" means information about a person's actual or alleged criminal offense(s).

"Criminal history record" means evidence of a person's actual or alleged criminal offense(s) (arrests, convictions, and supporting information) on file with law enforcement agencies, courts, the Hawaii criminal justice data center or in the national criminal history record files.

"Criminal history record check" means an examination or search for evidence of a person's criminal history by means of: (1) a search for the person's fingerprints in the national criminal history record files, and, if found, an analysis and any other information available pertaining thereto; and (2) a criminal history record check conducted by the Hawaii criminal justice data center.

"Department" means the department of public safety.

"Employment record check" means information relating to a person's work experience.

"FBI identification record" means a listing of certain information taken from fingerprint cards submitted to and retained by the FBI in connection with arrests and, in some instances, includes information taken from fingerprint cards submitted in connection with federal employment, naturalization, or military service. The FBI record is often referred to as a 'rap sheet'. The identification record includes the name of the agency or institution which submitted the fingerprint card to the FBI. If the fingerprint card concerns a criminal offense, the arrest charge, and the disposition of the arrest if known to the FBI. All arrest data included in an identification record are obtained from fingerprint cards, disposition reports and other reports submitted by agencies having criminal justice responsibilities. Therefore, the FBI

Identification Division is not the source of the arrest data reflected on an identification record.

"FBI rules to correct the FBI identification **record**" means rules and regulations published in the Federal Register by the FBI pertaining to the procedure for the affected individual to obtain, review, and request change, correction, or updating of any alleged deficiency to the FBI identification record.

"Fingerprinting" means the recording of a person's fingerprints using conventionally accepted equipment and procedures to satisfy the quality, readability, and specifications of the FBI's and the Hawaii criminal justice data center's criminal history record checking requirements.

"Position" means a specific job, whether occupied or vacant, consisting of all the duties and responsibilities assigned or delegated by a competent authority, requiring the full or part-time employment of one person.

"Prospective staff member" means any applicant for a position in the department who is directly involved with the treatment and care of persons committed to a facility or who possesses police powers including the power to arrest.

"Staff member" means any employee of the department who is directly involved with the treatment and care of persons committed to a facility or who possesses police powers including the power of arrest.

"Suitability" means fitness for employment after consideration of such factors as character, criminal history records, employment record, and other such information that the department deems necessary to ensure that staff members and prospective staff members are of reputable and responsible character, and are capable of performing the duties of the job.

"Suitability determination" means determining the applicant's suitability for any position classified as a "staff member." The suitability determination may be based on a criminal history record check, employment record checks, and other sources of information as the department deems necessary to evaluate character, reputation, and suitability for employment or continued employment.

"Unsworn falsification to authorities" means providing to the department an incorrect statement or a material omission by an applicant or staff person and shall be grounds for termination of a staff member or refusal to hire a prospective staff member. [Eff **APR 15 2000** 1 (Auth: HRS **S353C-2**) (Imp: HRS **S353C-5**)

S23-10-2 General rule. (a) All rules and regulations of the department of human resources development shall apply to the recruitment, appointment, and employment of staff members and prospective staff members except as may be modified herein.

(b) Staff members and prospective staff members shall be of reputable and responsible character. In order to ensure that staff members and prospective staff members are of reputable and responsible character and are capable of performing the duties of the job, suitability assessments shall be ongoing and shall include periodic criminal history checks and such other investigation as the department deems necessary. [Eff **APR 15 2000**] (Auth: HRS **S353C-2**) (Imp: HRS **S353C-5**)

S23-10-3 Staff member or prospective staff member to provide information. (a) Every prospective staff member is required to provide to the department, and the department of human resources development, as appropriate:

- (1) An accurately and fully completed employment application with all requested information and documents including employment references;
- (2) A sworn statement signed under penalty of unsworn falsification to authorities, indicating:
 - (A) Any conviction for a crime other than a minor traffic violation involving fines of fifty dollars or less;
 - (B) Any and all dismissals, discharges or terminations from employment, or resignations while under investigation

or while charges were pending for the past ten years;

- (C) **Any and** all instances in which the applicant was an unsuccessful candidate for a staff position with the department within the past ten years;
- (D) Whether the prospective staff member was ever discharged from the Armed Forces under other than honorable conditions;
- (E) Whether the prospective staff member is under indictment for any alleged criminal act other than a minor traffic violation involving a fine of fifty dollars or less; and
- (F) For positions requiring the use of a firearm, **whether** the prospective staff member is prohibited by law from possessing a firearm or ammunition;

- (3) A written consent for the department or an agency designated by the director to conduct a suitability determination authorizing access, including, criminal history records, employment records, and other sources of information as deemed necessary to verify facts and statements provided in the application process and to obtain a complete evaluation of the applicant's suitability; and

(4) Written permission to be fingerprinted.

(b) Every staff member is required to provide to the department annually, or at periods determined appropriate by the director:

- (1) A statement signed under penalty of unsworn falsification to authorities, indicating:
 - (A) Whether the staff member was convicted for a crime other than a minor traffic violation involving fines of fifty dollars or less; and
 - (B) Whether the staff member is under indictment for any alleged crime other than a minor traffic violation involving a fine of more than fifty dollars; and

(2) A written consent for the department or an agency designated by the director to conduct a suitability determination authorizing access, including, criminal history records, employment records, and other sources of information as deemed necessary and to obtain a complete evaluation of the staff member's suitability for continued employment; and .

(3) Written permission to be fingerprinted.

(c) Staff members and prospective staff members shall cooperate fully and make every reasonable effort to provide information and comply with fingerprinting and other related requirements when so notified and instructed by the department or its delegated agent. The department may refuse to hire and may terminate any person who fails to comply or ~~cooperate~~ during the suitability determination.. [Eff **APR 15 2000**]
(Auth: HRS §353C-2) (Imp: HRS §353C-5)

§23-10-4 Fingerprint requirement. Staff members and prospective staff members shall be fingerprinted for the purpose of complying with the criminal history record check. The department may refuse to hire or may terminate any person who fails to comply or cooperate with fingerprinting requirements. A file which identifies the individual conclusively shall be maintained by the department. This file shall be maintained separate from an individual's personnel file and shall be confidential. [Eff **APR 15 2000**]
(Auth: HRS §353C-2) (Imp: HRS §353C-5)

§23-10-5 Use of criminal history records results. (a) Information obtained from criminal history record checks shall be used exclusively by the department or the department of human resources development for the purpose of determining whether or not a person is suited for work as a staff member. Use and release of information obtained from the FBI shall be subject to federal laws and regulations. Use and release of information obtained through the Hawaii criminal justice data center shall be subject to such

federal and state laws and regulations as may be now or hereafter adopted.

(b) The department may disclose **information that** an affected individual's criminal history record check shows a 'clean criminal history record.' Federal law (28 U.S.C. 5534) otherwise prohibits the disclosure of criminal history information obtained from the FBI. An FBI identification record and information contained therein, however, may be disclosed to the affected individual when explaining decisions or contemplated decisions resulting in refusal to hire or termination of employment. Information from an FBI identification record may also be disclosed to a union representative or designated representative (i.e., attorney, excluded employee representative, etc.) with the consent of the affected individual. The affected individual shall be informed of his or her right to challenge the accuracy of the information contained in the FBI identification record. The Department shall not terminate a staff member or reject a prospective staff member until the individual has been afforded a reasonable time to correct or complete the FBI identification record, or has declined to do so.

(c) Criminal history information obtained from sources other than the FBI may be categorized into criminal convictions and arrest records. Criminal convictions are considered public records. Arrest records are private and shall not be released by the department except in the process of verifying the disposition of arrests, or as otherwise required by law. Information regarding a person's arrest record for offenses that may pose a risk to the health, safety, security, or well-being of inmates under supervision and confinement, other staff, or the public at large may be used as a basis to delay hiring decisions or for the suspension of employment pending further inquiry and investigation. Arrest records shall not be used as a basis to refuse to employ a prospective staff member or to terminate a staff member.

(d) Any disclosure of information pertaining to staff members or prospective staff members shall be subject to applicable state and federal laws, rules and regulations. [Eff **APR 1 5 2000**] (Auth: HRS §353C-2) (Imp: HRS §353C-5)

§23-10-6 Suitability determination. A suitability determination may be made on staff member's or prospective staff member's fitness for employment based on criminal history records, employment records, and other such information that the department deems necessary to ensure that staff members and prospective staff members are of reputable and responsible character, and are capable of performing the duties of the job. [Eff. **APR 15 2000**]
(Auth: HRS §353C-2) (Imp: HRS §353C-5)

§23-10-7 Denial or termination of employment. In addition to ~~any existing rules and regulations~~, the department may deny or terminate employment:

- (1) If the department determines after investigation that the prospective staff member is not suitable for employment, or the staff member is not suitable for continued employment;
- (2) If the prospective staff member was convicted of a crime other than a minor traffic violation involving a fine of fifty dollars or less and the department finds from the prospective staff member's criminal history record that the prospective staff member poses a risk to the health, safety, security or well being of inmates under supervision and confinement, other staff, or the public at large.
- (3) If the staff member was convicted of a crime other than a minor traffic violation involving a fine of fifty dollars or less, and the department determines that the staff member poses a risk to the health, safety, security or well-being of inmates under supervision and confinement, other staff, or the public at large. Staff members shall not be subject to termination based on findings in their criminal records except for conviction of a crime which occurred after May 8, 1989;
- (4) If the prospective staff member or staff member is a fugitive from justice; or

- (5) Other good cause as determined by the department or director.

[Eff **APR 15 2000** 1 (Auth: HRS §353C-2)
(Imp: HRS §353C-5)

§23-10-8 Administrative review. A staff member or prospective staff member may request an administrative review of a suitability determination by submitting to the department, in writing, information to substantiate the request within ten calendar days following the date of notification.

[Eff **APR 15 2000**] (Auth: HRS §353C-2) (Imp: HRS §353C-5)

§23-10-9 Appeal to the state civil service commission. A staff member or prospective staff member may file an appeal with the state civil service commission in writing within twenty calendar days from the date of notification of the results of the administrative review.

[Eff **APR 15 2000**] (Auth: HRS §353C-2) (Imp: HRS §353C-5)

§23-10-10 Implementation procedures and instructions. (a) The department shall develop policies and procedures to implement the provisions of this chapter.-

(b) The department may implement the provisions of this chapter incrementally subject to the availability of funds and resources.

[Eff **APR 15 2000**] (Auth: HRS §353C-2) (Imp: HRS §353C-5)

HAWAII ADMINISTRATIVE RULES

TITLE 23

DEPARTMENT OF PUBLIC SAFETY

SUBTITLE 2

CORRECTIONS

CHAPTER 100

VISITS

523-100-1	General provisions
\$23-100-2	Visitation parameters
\$23-100-3	Visitation requirements
823-100-4	Visitation rules
\$23-100-5	Group visits
\$23-100-6	Search

\$23-100-1 General provisions. (a) Persons may be allowed to visit inmates subject to the following limitations:

- (1) The availability of visiting space and the location of the facility;
- (2) The availability of facility resources **incident** to arranging and supervising visits;
- (3) The rescheduling of visits which shall not interfere with other scheduled institutional activities;
- (4) Personal visitation restraints placed on an inmate for disciplinary actions; and
- (5) Any other good cause which the facility decides that visitation may jeopardize the good government, safety, and the security of the facility, inmate, or visitors.

(b) Notification of contraband laws to visitors shall **be made** by appropriate means at each facility before the entrance of the individual, either by form or sign.

(c) All visitors are subject to **background checks**, including criminal history checks, and may be required to provide personal information to allow the facility to conduct such checks. Failure to provide such information may result in disapproval of the request for a visit. [Eff **APR 15 2000** I (Auth: HRS §353C-2) (Imp: HRS §353C-2)]

§23-100-2 Visitation parameters. Visitation hours shall be set for each facility by the department. Exceptions to established hours are permitted to one or more of the following:

- (1) Restricting visitation on these days or hours may be a physical hardship upon individuals whereon suitable hours may be made if reasonably possible;
- (2) Emergency conditions exist which required a facility to alter the schedule;
- (3) Attorneys can visit their clients during the normal working day including weekends and holidays as long as the safety, security, and good government of the facility are not jeopardized. Special visits between an attorney and the client during other hours may be allowed with the approval of the facility administrator; provided that the burden is on the attorney and the inmate to provide sufficient information to corroborate the allegation that the attorney actually represents the inmate; and
- (4) Any other exceptions the facility finds feasible in accordance to its schedules and resources available. [Eff **APR 15 2000**]
(Auth: HRS §353C-2) (Imp: HRS §353C-2)

§23-100-3 Visitation requirements. (a) Every person who is eligible to visit with inmates shall complete and submit an official application as well as an official notice and authorization of personal search form.

(b) While the existence of prior criminal convictions(s) of a visitor may not preclude visits,

(d) Visits between attorney and client shall not be subject to auditory supervision. Tape recordings may be used by the attorney during the course of the visit if the attorney certifies in writing in advance that the only purpose of the recording is to facilitate the attorney-client relationship.

(e) Withdrawal of visiting privilege may be made because of non-compliance with any established rules.

[Eff **APR 15 2000** 1 (Auth: HRS §353C-2) (Imp: HRS §353C-2)

§23-100-5 Group visits. (a) The facility may ~~permit interested groups to visit the facility when~~ conditions insure the safety of the facility and the visitors and in accordance with the department's procedures.

(b) Such groups may be served meals, at the official price, provided the serving of meals does not interfere with the orderly operation of the facility or place an undue burden on the employees.

[Eff **APR 15 2000**] (Auth: HRS §353C-2) (Imp: HRS §353C-2)

§23-100-6 Search. All visitors shall be subject to personal search in accordance with department's policies and facility procedures.

[Eff **APR 15 2000** 1 (Auth: HRS §353C-2) (Imp: HRS §353C-2)

HAWAII ADMINISTRATIVE RULES

TITLE 23

DEPARTMENT OF PUBLIC SAFETY

SUBTITLE 2

CORRECTIONS

CHAPTER 101

CONTRABAND

§23-101-1 Contraband

523-101-i Contraband. (a) Any item not specifically authorized for possession by a person ~~by~~ the facility administrator or guidelines shall be contraband and shall be confiscated and subject the person to criminal or disciplinary sanctions or both.

(b) Intoxicating substances of any kind, including but not limited to liquor, **alcoholic** substances or any other substances which are known to produce or are capable of producing a state of intoxication, shall not be possessed or brought the correctional facility grounds, including the onto parking lots, by anyone. Any person, including staff inmates, and visitors, bringing intoxicating substances onto correctional facility grounds may be subjected to disciplinary, administrative, or criminal sanctions. [Eff **APR 15 2000**] (Auth: HRS §353C-2) (Imp: HRS §353C-2)

HAWAII ADMINISTRATIVE RULES

TITLE 23

DEPARTMENT **OF** PUBLIC SAFETY

SUBTITLE 3

LAW ENFORCEMENT

CHAPTER 200

REGULATION OF CONTROLLED SUBSTANCES

\$23-200-1	Purpose
\$23-200-2	Definitions
\$23-200-3	Registration requirements
\$23-200-4	Fees for registration and re- registration
\$23-200-5	Persons required to register but exempted from fee
\$23-200-6	Persons exempted from registration
\$23-200-7	Time and method of registration
\$23-200-8	Modification, transfer and termination of certificate of registration
\$23-200-9	Revocation and suspension of certificate of registration
\$23-200-10	Separate registration for separate locations
\$23-200-11	Inspections of establishments of registrants
\$23-200-12	Records of controlled substances
\$23-200-13	Filing requirements
\$23-200-14	Professional use of controlled substances
\$23-200-15	Prescriptions
\$23-200-16	Telephone prescriptions
\$23-200-17	Electronic reporting of dispensation of controlled substances
\$23-200-18	Filing of prescriptions
\$23-200-19	Professional samples of controlled substances
\$23-200-20	Procedures for disposal of controlled substances

523-200-21	Production of controlled substance- bearing plants
§23-200-22	Confidentiality and access to records
523-200-23	Offenses and penalties
§23-200-24	Severability

Historical note: This chapter is based substantially upon Chapter.32 of Title 11, Public Health Regulations. [Eff 06/29/73; R 06/01/82]

§23-200-1 Purpose. The purpose of this chapter is to prescribe rules for the registration, use, prescription, disposal, and production of controlled substances within this State. [Eff **APR 15 2000**]
(Auth: HRS §§329-31, 353C-2) (Imp: HRS §329-31)

§23-200-2 Definitions. The following definitions shall apply in the interpretation and enforcement of this chapter:

"Abuse" means the misuse of a substance or the use of a substance to an extent deemed **deleterious** or detrimental to the user, to others, or to society.

"Administer*" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

- (1) A practitioner;
- (2) A licensed health care professional acting as the practitioner's authorized agent or in the practitioner's presence or at the practitioner's direction; or
- (3) The patient or **research subject** at the direction or in the presence of the practitioner.

"Administrator" means the administrator of the narcotics enforcement division of the department of public safety.

"Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

"Bureau" or "**DEA**" means the Drug Enforcement Administration, United States Department of Justice, or its successor agency.

"Central repository" means a central repository established under section 329-102, Hawaii Revised Statutes.

"Controlled substance" means a drug, substance, or immediate precursor in schedules I through V of Chapter 329 part II, Hawaii Revised Statutes.

"Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

"Deliver" or "**delivery**" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

"**Department**" means the department of public safety.

"Designated state **agency**" means the narcotics enforcement division, department of public safety.

"Director" means the director of the department of public safety or the director's duly authorized agent.

"Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery. A controlled substance is dispensed when:

- (1) It is compounded, prepared, labeled and packaged pursuant to the lawful order of a practitioner by a licensed pharmacist acting in the usual course of his professional practice and who is either registered individually or employed in a registered pharmacy or by a registered institutional practitioner, for delivery to the ultimate user;

- (2) It is compounded, prepared, labeled and packaged for delivery to the ultimate user by a practitioner acting in the usual course of his professional practice;
- (3) It is prepared, labeled, and packaged pursuant to the lawful order of a practitioner by a registered health care professional acting as an agent of the practitioner for delivery to the ultimate user by the practitioner; or
- (4) It is prepackaged by a pharmacist for use in an emergency facility for delivery to the ultimate user by a licensed or registered health care professional pursuant to the order of a physician.

"Dispenser" means a practitioner who dispenses.

"Distribute" means to deliver other than by administering or dispensing a controlled substance.

"Distributor" means a person who distributes.

"Drug" means:

- (1) Substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;
- (2) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;
- (3) Substances (other than food) intended to affect the structure or any function of the body of man or animals; and
- (4) Substances intended for use as a component of any article specified in clause (1), (2), or (3) of this definition. It does not include devices or their components, parts, or accessories.

"Drug Enforcement Administration registration number" means the practitioner's Drug Enforcement Administration controlled substance registration number.

"Exception report" means an output of data indicating schedule II controlled substances dispensation that is outside expected norms for a practitioner practicing a particular specialty or

field of health care, for a dispenser doing business in a particular location, or for a patient.

"Identification number" means, with respect to a patient:

- (1) The unique, valid driver's license number of the patient, followed by the two-digit United States Postal Service code for the state issuing the driver's license or, if the patient is a foreign patient, the patient's passport number. If the patient does not have a driver's license, the "identification **number**" means the patient's social security number, followed by the patient's state of residency code. If the patient is less than eighteen years old and has no such identification, the identification number means the unique number contained on the valid driver's license of the patient's parent or guardian; or
- (2) If the controlled substance is obtained for an animal, the unique number described in paragraph (1) of the animal's owner.

"**Immediate precursor**" means a substance which the department has found to be and by rule or statute designated as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

"Individual practitioner" means a physician, dentist, veterinarian, or other individual licensed and registered under chapter 329-32, Hawaii Revised Statutes, to distribute, dispense,, prescribe or conduct research in the course of professional practice, but does not include a clinic, pharmacist, pharmacy, **midlevel** practitioner or, an institutional practitioner..

"**Institutional practitioner**" means a clinic, hospital, or other person (other than an individual) licensed, and registered under chapter 329-32, Hawaii Revised Statutes, to dispense a controlled **substance** in the course of professional practice, but does not include a pharmacy.

"Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for the individual's own use or the preparation, compounding, packaging, or labeling of a controlled substance:

- (1) By a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice, or
- (2) By a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

"Marijuana" means all parts of the plant (genus) Cannabis whether growing or not, the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin having a tetrahydrocannabinol concentration greater than 0 percent. It does not include the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination and which has a tetrahydrocannabinol concentration of 0 percent.

"Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

- (1) **Opium** and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

- (2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (1), but not including the isoquinoline alkaloids of opium.
- (3) Opium poppy and poppy straw.
- (4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extraction's of coca leaves which do not contain cocaine or ecgonine.

"NABP number" means the identification number assigned to each individual pharmacy by the National Council of Prescription Drug Programs.

"NDC number" means the national drug code number.

"Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability., It does not include, unless specifically designated as controlled under section 329-11, Hawaii Revised Statutes, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

"Opium poppy" means the plant of the species *papaver somniferum*, except its seeds.

"Person" means individual, corporation, government, or governmental subdivision or agency,, business trusts, estate, trust, partnership or association, or any other legal entity.

"Pharmacist" means a licensed pharmacist, apothecary, or druggist as defined by the laws of the State.

"Physician assistant" means a person licensed under section 453-5.3, Hawaii Revised Statutes, who is registered under this chapter to administer, prescribe or dispense a controlled substance under the authority and supervision of a physician registered under section 329-33, Hawaii Revised Statutes.

"Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

"Podiatrist" means a foot specialist authorized by law to practice podiatry and to dispense controlled substances in the course of his professional practice in this State.

"Practitioner" means:

- (1) A physician, dentist, veterinarian, scientific investigator, or other person licensed and registered under section 329-32, Hawaii Revised Statutes, to distribute, dispense, prescribe or conduct research with respect to a controlled substance in the course of professional practice or research in this State but does not include **midlevel** practitioners.
- (2) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this State.

"Prescribe" means to direct, designate or order the use of a formula for the preparation of a drug and medicine for a disease or illness and the manner of using them.

"Prescriber" means one who is authorized to issue a prescription.

"Prescription" means an order or formula issued by a licensed practitioner of medicine, osteopathy, podiatry, dentistry, or veterinary medicine, for the compounding or dispensing of drugs.

"Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

"Public Law 91-513" means the Federal Comprehensive Drug Abuse, Prevention, and Control Act of 1970.

"**Registration**" means the act of registering with the department of public safety, State of Hawaii.

"State", when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area

subject to the legal authority of the United States of America.

****Supervising physician** means a physician licensed to practice medicine in the State and registered under section 329-33, Hawaii Revised Statutes, who supervises a physician assistant and retains full professional and legal responsibility for the performance of the physician assistant and the care and treatment of the patient.

"System" means an electronic prescription accountability system as described in chapter 329, **part VIII**, Hawaii Revised Statutes.

***Ultimate user** means a person who lawfully possesses a controlled substance for the person's own use or for the use of a member of the person's household or for administering to an animal owned by the person or by a member of the person's household.
[Eff **APR 15 2000**] (Auth: HRS §§329-31, 353C-2) (Imp: HRS §329-31)

§23-200-3 Registration requirements. Every person who manufactures, distributes, prescribes, or dispenses any controlled substance listed in part II, chapter 329, Hawaii Revised Statutes, within this State or who proposes to engage in the manufacture, distribution, prescription, or dispensing of any controlled substance within this State, or who dispenses or proposes to dispense any controlled substance for use in this State by shipping, mailing, or otherwise delivering the controlled substance from a location out of this State, shall obtain annually a certificate of registration issued by the department.
[Eff **APR 15 2000**] (Auth: HRS §§329-31, 353C-2) (Imp: HRS §329-32)

§23-200-4 Fees for registration and re-registration. (a) For each registration or re-registration to manufacture controlled substances, the registrant shall pay an application fee of \$100.00 for an annual registration.

(b) For each registration or re-registration to distribute controlled substances, the registrant shall

pay an application fee of \$75.00 for an annual registration.

(c) For each registration or re-registration to administer, prescribe, dispense, or to conduct instructional activities with, controlled substances listed in sections 329-16 through 329-22, Hawaii Revised Statutes (schedules II through V), the registrant shall pay an application fee of \$60.00 for an annual registration.

(d) For each registration or re-registration to conduct research or instructional activities with a controlled substance listed in sections 329-14 through section 329-22, Hawaii Revised Statutes (schedules I through V), the registrant shall submit for approval, a research protocol of the activity to be conducted. The research protocol shall be in accordance with section 1301.13 and 1301.18, Title 21, Code of Federal Regulations. The applicant shall also pay an application fee of \$60.00 for an annual registration.

(e) For each registration or re-registration to conduct chemical analysis with controlled substances listed in any schedule, the registrant shall pay an application fee of \$60.00 for an annual registration.

(f) For each registration or re-registration to engage in a narcotics treatment program, including a compounder, the registrant shall pay an application fee of \$60.00 for an annual registration.

(g) For each duplicate registration requested, the registrant shall submit a written request and shall pay a fee of \$10.00. [Eff **APR 15 2000**]

(Auth: HRS §§329-31, 353C-2) (Imp: HRS §§329-32, 329-33)

§23-200-5 Persons required to register but exempt from fee. (a) The director shall exempt requirement of obtaining a registration fee for registration or re-registration:

- (1) Any hospital or other institution which is operated by an agency of the United States (including the U.S. Army, Navy, Marine Corps, Air Force, Coast Guard, Veteran's Administration), of any State, or any political subdivision or agency thereof; and

- (2) Any individual practitioners who are required to obtain an individual registration in order to carry out their duties as an official of an agency of the United States (including the U.S. Army, Navy, Marine Corps, Air Force, Coast Guard, Veteran's Administration), of any State, or any political subdivision thereof.

(b) In order to claim exemption from payment of a registration or re-registration application fee, the registrant shall have completed the certification on the appropriate controlled substance application form wherein the registrant's superior (if the registrant is an individual) or officer (if the registrant is an agency) certifies to the status and address of the registrant and to the authority of the registrant to acquire, possess, or handle controlled substances.

(c) Any person who is exempt from the registration fee may apply to re-register not earlier than sixty days prior to the expiration date of the registration. A fee of \$25 shall be paid for re-registration after the expiration date on the certificate of registration. Exemption from payment of a controlled substance registration or re-registration fee does not relieve the registrant of any other requirements or duties prescribed by law.

(d) In order to enable law enforcement agency laboratories to obtain and transfer controlled substances for use as standards in chemical analyses, laboratories must obtain annually a registration to conduct chemical analyses. Such laboratories shall be exempted from payment of any fee for registration.

[Eff **APR 15 2000**] (Auth: HRS §§329-31, 353C-2) (Imp: HRS §329-32)

§23-200-6 Persons exempted from registration.

(a) Registration is not required for the following persons under these circumstances:

- (1) Any officer or employee of the Bureau 'or DEA, any officer of the U.S. Bureau of customs, any officer or employee of the United States Food and Drug Administration, and any other federal officer who is lawfully engaged in the enforcement of any

federal law relating to controlled substances, drugs or customs, and is duly authorized to possess controlled substances in the course of their official duties;

- (2) Any officer or employee of this State, or political subdivision or agency thereof, who is engaged in the enforcement of any state or local law relating to controlled substances and is duly authorized to possess controlled substances in the course of their official duties; and
- (3) Law enforcement laboratory personnel when acting in the scope of their official duties.

(b) Any official exempted by this section may, when acting in the course of their official duties, possess any controlled substance and distribute any such substance to any other official who is also exempted by this section and acting in the course of their official duties. [Eff. APR 15 2000] (Auth: HRS §329-31) (Imp: HRS §§329-31, 329-32)

§23-200-7 Time and method of registration.

~~Registration and re-registration fees shall be paid~~ (a) at the time when the application for registration or re-registration is submitted for filing. Payment shall be made in the form of a personal, certified, cashier's check or money order made payable to the narcotics enforcement division, department of public safety. Payment made in the form of stamps, foreign currency, or third party endorsed checks will not be accepted. No prorated or full refund will be issued once the certificate is processed. In the event that the application is not accepted for filing or is denied, the payment shall be refunded to the applicant.

(b) Any person who is required to be registered and who is not so registered may apply for registration at any time. No person required to be registered shall engage in any activity for which registration is required, until the application for registration is granted and a certificate of registration is issued by the administrator to such person.

(c) All controlled substance applications shall be processed by the department within 60 days after receipt of the completed application, to include all requested documentation. In the absence of a national disaster, state emergency, or union strike which would prevent the department from reviewing the application, any application pending more than 60 days after receipt of the completed application shall be deemed granted.

(d) State registration shall expire as noted on the certificate of registration. Any person who is registered may apply to be re-registered not earlier than sixty days prior to the expiration date on the certificate of registration. An additional fee of \$25.00 shall be paid for re-registration after the expiration date on the certificate of registration.

(e) Failure to register with the department will prohibit the registrant from engaging in any activity utilizing controlled substances.

(f) The administrator may require an applicant to submit such documents or written statements of fact relevant to the application as he deems necessary to determine whether the application should be granted. The failure of the applicant to provide such documents or statements within thirty days after being requested to do so shall be deemed to be a waiver by the applicant of an opportunity to present such documents or facts for consideration by the administrator in granting or denying the application.

[Eff **APR 15 2000**] (Auth: HRS §§329-31, 353C-2)
(Imp: HRS §329-32)

823-200-8 Modification, transfer and termination of certificate of registration. (a) Registrants may apply to modify their registration to handle additional controlled substances by filing an application in the same manner as an application for new registration. In the event of a change of a name or address, the registrant shall submit a letter to the department of public safety, narcotics enforcement division. The letter shall contain the new name or address and the effective date. Such notification shall be within thirty days of such fact. No fee shall be required to be paid for the modification.

(b) Failure to report a change of address within thirty days will invalidate the registration and require re-registration and the imposition of the \$25 late fee.

(c) No registration or any authority conferred thereby shall be assigned or otherwise transferred.

(d) A certificate of registration issued to any persons shall terminate if and when such person dies, ceases legal existence, discontinues business or professional practices. Such person or the person's representative shall notify the administrator in writing within thirty days of such fact.

[Eff **APR 15 2000** 1 (Auth: HRS §§329-31, 353C-2)
(Imp: HRS §329-32)]

§23-200-9 Revocation and suspension of certificate of registration. (a) A certificate of registration issued under section 329-33, Hawaii Revised Statutes, may be denied, suspended, or revoked by the department for any of the reasons cited in section 329-34, Hawaii Revised Statutes.

(b) The department may suspend or deny any registration simultaneously with the institution of proceedings under section 329-34, Hawaii Revised Statutes, or where it finds there is danger to the public health and safety which warrants this action.

(c) An order to show cause served upon the applicant or registrant shall **contain a** statement of the basis for the action and shall call upon the applicant or registrant to appear before the department at a time and place not less than thirty days after the service of the order.

(d) Failure of a registrant to respond to the order to show cause shall result in an automatic revocation, suspension or denial of the certificate of registration.

(e) The proceedings will be conducted in accordance with section 329-35, Hawaii Revised Statutes. [Eff **APR 15 2000**] (Auth: HRS §§329-31, 353C-2) (Imp: HRS §§ 329-34, 329-35)

§23-200-10 Separate registration for separate locations. A separate registration is required for

each principal place of business or professional practice where the applicant manufactures, distributes, administers, dispenses, or stores controlled substances. Registrants are required to notify the narcotics enforcement division in writing of all non-registered office locations where the registrant only prescribes controlled substances but does not administer or dispense. Failure of a registrant to notify the department shall result in the automatic revocation of the registrant's controlled substance registration.-

[Eff **APR 15 2000**] (Auth: HRS §§329-31, 353C-2) (Imp: HRS §329-32)

§23-200-11 Inspections of establishments of registrants. (a) The department or its agents may inspect the establishment of a registrant or applicant at reasonable times to ensure proper registration and to ensure compliance with all applicable State and Federal laws. In order to safeguard against diversion of controlled substances, the department may require the registrant of the place where controlled substances are kept to:

- (1) Install a device which will give warning upon breaking into or entering such place, if such place has had repeated thefts of controlled substances or if large amounts are stored on the premises; and
- (2) Install enclosures around the area where controlled substances are kept to prevent any unauthorized person from entering such area.

(b) No person or business activity not directly related to the practice of pharmacy shall be permitted within the confines of the pharmacy proper.

(c) The entire area of any place where controlled substances are maintained shall be kept clean and in good repair and order.

(d) All controlled substances and equipment shall be kept in accordance with provisions of chapter 329, Hawaii Revised Statutes. [Eff **APR 15 2000**] (Auth: HRS §§329-31, 353C-2) (Imp: HRS §329-32)

§23-200-12 Records of controlled substances.

(a) Every physician, dentist, podiatrist, veterinarian or other practitioner shall keep a record of all controlled substances received, transferred, administered, prescribed, or disposed of as damaged or outdated, showing the amounts received, transferred, administered, prescribed, dispensed or disposed of for a period of five years. All records pertaining to the administration, dispensing or prescribing of controlled substance must be produced and made available upon request by the department or its agents.

(b) Distributors, manufacturers, wholesalers, and their representatives shall keep a record of the controlled substance produced, distributed, received, and disposed of by them.

(c) Pharmacies shall keep a record of all controlled substances received, dispensed, and disposed of by them.

(d) Inventories and records of all controlled substances shall be maintained separately from all other business records.

(e) Inventories or records of all controlled substances must be produced and made available upon request by the department or its agents.

(f) The theft or loss of any controlled substance regulated by this chapter discovered by any person regulated by this part shall be reported to the department within 24 hours of the receipt of actual knowledge of the discrepancy. The registrant shall within three calendar days submit a written report of the theft or loss to the department.

[Eff **APR 15 2000**] (Auth: HRS §§329-31, 353C-2) .
(Imp: HRS §329-36)

§23-200-13 Filing requirements.

(a) All persons registered to manufacture, distribute, or dispense controlled substances and all persons who transport, warehouse, or otherwise handle controlled substances, shall file with the department, copies of order, receipt and distribution forms of schedule I and II controlled substances and other controlled substances designated by the department, showing the amounts of such controlled substances ordered,

received, distributed, transported, warehoused, or otherwise handled.

(b) The record of controlled substances received shall contain the date, the name of the person from whom received, the kind and quantity of the controlled substance and a copy of each such record shall be forwarded to the department as directed by the narcotics enforcement division, department of public safety. Controlled substances listed in schedule I and II and ordered on an official order form issued by the Drug Enforcement Administration need not be reported to the department unless requested in writing by the department.

(c) The records of controlled substances sold, administered, or dispensed, shall contain the date, name of the person for whom, or the animal for which sold, administered, or dispensed, and the kind and quantity of controlled substances. Every such record shall be kept for a period of five years from the date of transaction recorded. [Eff **APR 15 2000**]
(Auth: HRS §§329-31, 353C-2) (Imp: HRS §329-37)

§23-200-14 Professional use of controlled substances. (a) A physician, in good faith and in the course of professional practice only, may prescribe, administer or dispense a controlled substance in accordance with the certificate of registration, or may cause the same to be administered by a health care professional under the direction and supervision of the physician.

(b) A dentist, in good faith and in the course of professional practice only, may prescribe, administer, or dispense a controlled substance in accordance with the certificate of registration, or cause the same to be administered by a health care professional under the direction and supervision of the dentist.

(c) A podiatrist, in good faith and in the course of professional practice only, may prescribe, administer, or dispense a controlled substance in accordance with the certificate of registration, or may cause the same to be administered by a health care professional under the direction and supervision of the podiatrist.

(d) A veterinarian, in good faith and in the course of professional practice only, and not for use by a human being, may prescribe, administer or dispense a controlled substance or cause the same to be administered by the authorized agent under the direction and supervision of the veterinarian.

(e) A physician assistant, in good faith and in the course of professional practice only, may prescribe or administer a controlled substance under the authority and supervision of the supervising physician as designated under section 329-38, Hawaii Revised Statutes.

(f) Any duly authorized person, employed by an institutional practitioner, who has obtained any controlled substance for administering to a patient shall immediately dispose of any unused portion of the controlled substance through authorized procedures in accordance with section 23-200-20, when it is no longer required for the patient.

(g) Methadone administered or dispensed to a patient at a methadone treatment program, and changes in quantity administered or dispensed, must be approved by the treating physician prior to the administration or dispensing.

(h) Administering, dispensing, or transferring for the purpose of dispensing of outdated, contaminated, or ~~damaged~~ controlled substances is prohibited. [Eff APR 15 2000] (Auth: HRS §§329-31, 353C-2) (Imp: HRS §329-31)

§23-200-15 Prescriptions. (a) A prescription for a controlled substance may be issued only by an individual practitioner who is registered by the department of public safety to prescribe controlled substances in the State of Hawaii. All controlled substance prescription forms issued shall be no larger than 4-1/2" x 6-1/2" in size and no smaller than 4" x 5".

(b) Any alteration to the patient name, date issued, drug, quantity, strength, or refill section of a controlled substance prescription invalidates the prescription, unless authorized by the administrator.

(c) Prescriptions for schedule II controlled substances shall be submitted to the pharmacist in

duplicate. The pharmacist shall, within seven days after filling the prescription, forward the duplicate including the pharmacy's NABP number, the NDC number for the dispensed drug, and the patient's identification number to the department, or shall submit all information to the department as prescribed by the department. Requirements for forwarding duplicate schedule II prescriptions, may be waived by the department if the pharmacy is capable of **providing** the required information electronically in a format approved by the department. The department shall retain the original thereof on file for a period of two years after filling the same.

(1) A prescription for schedule II controlled substance written for a patient in a long term care facility or for a patient with a medical diagnosis documenting a terminal illness may be filled in partial quantities to include individual dosage units in accordance with all regulations stated in section 1306.13(b), Title 21, Code of Federal Regulations.

(d) The pharmacist filling the prescription shall properly endorse the prescription at such time and such endorsement shall contain the name of the pharmacy, pharmacist's initials, date filled, and the prescription's serial number.

(e) A pharmacist may dispense controlled substances to any individual upon receipt of a prescription, originating from within the state, written with ink or indelible pencil or typewritten, dated and signed on the date when issued by a physician, dentist, podiatrist, or veterinarian and bearing the full name and address of the patient for whom or of the owner of the animal for which the controlled substance is prescribed, **the** drug, quantity, strength, refill amount and the prescriber's name, address, business phone number and Drug Enforcement Administration registration number. If the prescription is for an animal, it shall state the species of animal for which the controlled substance is prescribed.

(f) A practitioner shall keep a record of all controlled substances administered, prescribed and dispensed.

- (g) Filling and refilling of prescriptions.
- (1) The refilling of a prescription for a controlled substance listed in schedule II is prohibited;
- (2) No prescription for a schedule II controlled substance shall be filled later than the third day following the day of issuance;
- (3) No prescription for a controlled substance listed in schedule III, IV, or V shall be filled or refilled more than three months after the date on which such prescription was issued and no such prescription authorized to be refilled shall be refilled more than two times whichever comes first. Physician authorization and a new prescription number are required after two refills;
- (4) The date of each refill and identification of the dispensing pharmacist must be noted on the prescription unless the prescription records are stored in a computerized database;
- (5) Prescription records stored in a computerized database must include the authorized number of refills and the date and dispensing pharmacist for each refill; and
- (6) No prescription which has been altered in any manner shall be filled or refilled without authorization from the administrator.
- (h) Emergency dispensing of schedule II controlled substances.
- (1) In the case of an emergency, an epidemic, or a sudden unforeseen accident or calamity, an individual practitioner may issue an oral prescription to a pharmacist to dispense schedule II controlled substances, provided that within seven days thereafter the prescription is reduced to writing by the practitioner and filed by the pharmacy;
- (2) A schedule II controlled substance may be dispensed by a pharmacist upon receiving an oral authorization directly from a prescribing individual practitioner,

providing that the amount prescribed and dispensed is limited to the amount adequate to treat the patient only during the emergency period and that within 72 hours thereafter the prescription is reduced to writing by the practitioner and filed by the pharmacy (dispensing beyond the emergency period must be pursuant to a written prescription signed by the prescribing practitioner); and

- (3) Emergency dispensing of controlled substances shall be in accordance with section 1306-11(d), Title 21, Code of Federal Regulations. [Eff APR 15 2000]
 (Auth: HRS §§329-31, 353C-2) (Imp: HRS 55329-36, 329-38; 21 C.F.R. 1306.11(d), 1306.13(b))

§23-200-16 Telephone prescriptions. (a) In lieu of a written prescription, a pharmacist, in good faith, may dispense schedule III, IV, and V controlled substances, to any person upon receiving an oral prescription over the telephone from a prescriber originating from within the State; provided that:

- (1) The pharmacist shall promptly reduce to writing:
- (A) The oral prescription in full;
 - (B) The name, strength, and quantity of the drug, and specific directions for the drug's use;
 - (C) The date the oral prescription was received;
 - (D) The full name, Drug Enforcement Administration registration number, and oral code number of the practitioner; and
 - (E) The name and address of the person for whom the controlled substance was prescribed or the name of the owner of the animal for which the controlled substances was prescribed, unless the pharmacy filing the prescription has the address on file.

(b) The pharmacist filling such oral prescription shall write the date of filling and his initials on the face of the written memorandum.

(c) Only a pharmacist shall receive an oral prescription. The receiving pharmacist shall ask the calling individual practitioner or his agent for the **oral** code number and shall enter the same on the written memorandum. No oral prescription for a controlled substance shall be filled unless the receiving pharmacist receives the prescriber's correct oral code and Drugs Enforcement Administration registration number.

(d) **A written** memorandum of a telephone oral prescription shall not be filled or refilled more than 3 months after the date on which such prescription was issued and no such prescription be refilled more than 2 times.

(e) Oral code numbers may be issued to practitioners by the department. Nothing in this section shall be construed to prohibit the Administrator to deny or rescind the oral code number for any violation of this chapter.

[Eff **APR 15 2000**] (Auth: HRS §§329-31,
353C-2) (Imp: HRS §§328-16, 329-38)

§23-200-17 Electronic reporting of dispensation of controlled substances. (a) All pharmacies shall transmit electronically all controlled substance prescription data as specified by the administrator. The administrator shall determine those schedules of controlled substances, classes of controlled substances, and specific controlled substances that are to be electronically transmitted to the department. No identified controlled substances may be dispensed unless information relevant to the dispensation of the substance is reported electronically or by universal claim form to the central repository established under section 329-102, Hawaii Revised Statutes.

(b) The information required by this section shall be transmitted:

- (1) On an electronic device that is compatible with the receiving device of the central repository; or

- (2) By computer diskette, magnetic tape, or pharmacy universal claim form that meets the specifications provided by the Administrator.

(c) The information to be transmitted under subsection (b) shall include at least the following for each dispensation:

- (1) The patient's name;
- (2) The patient's identification number;
- (3) The patient's date of birth;
- (4) The eight-digit national drug code number of the substance dispensed;
- (5) The date of dispensation;
- (6) The quantity and number of refills authorized;
- (7) The practitioner's Drug Enforcement Administration registration number;
- (8) The pharmacy's National Association of Boards of Pharmacy number and location; and
- (9) The practitioner's practice specialty and subspecialties, as determined by the applicable licensure boards.

(d) Under the system:

- (1) Information shall be reported **in numerical** format, not less than once every seven days, on the filling of prescriptions for designated controlled substances and the dispensing of drug samples by a licensed practitioner; and
- (2) Each dispenser shall maintain a record of such filled prescriptions, including all information described in subsection (c), for a period of five years. Each dispenser shall keep these records available for inspection and **copying by the designated** state agency. [Eff **APR 15 2000**]
(Auth: HRS §§329-31, 353C-2) (Imp: HRS §329-101)

§23-200-18 Filing of prescriptions.

Prescriptions for ~~controlled substances~~ ^(a) listed in schedule II shall be maintained in a separate prescription file.

(b) Prescriptions for controlled substances listed in schedules III, IV, and V shall be maintained as follows:

- (1) In a separate prescription file, or
- (2) In such form that they are readily retrievable from the other prescription records of the pharmacy. Prescriptions will be deemed readily retrievable if, at the time they are initially filed, the face of the prescription is stamped in red ink in the lower right hand corner with the letter "c" no less than one inch high and filed either in the prescription file for the usual consecutively numbered prescription file for non-controlled substances, or
- (3) In a computerized database that provides a daily printout of those prescriptions that are maintained with other controlled substance records of the pharmacy.

(c) Prescriptions, orders, and records required by this chapter shall be open for inspection only to federal, state, county and municipal officers whose duty is to enforce the drug laws of the State or the Federal Uniform Controlled Substance Act.

[Eff **APR 15 2000**] (Auth: HRS §§329-31, 353C-2)
(Imp: HRS §§329-36, 329-37, 329-38)

§23-200-19 Professional samples of controlled substances. (a) No person shall distribute professional samples of controlled substances to a practitioner except in response to a written request made on a form, which indicates:

- (1) Name, address, professional designation and signature of the practitioner making the request;
- (2) The name of the drug sample requested and the quantity requested;
- (3) The name of the manufacturer; and
- (4) The date of the request.

(b) No person shall distribute professional samples of controlled substances to a practitioner without first:

- (1) Determining that the practitioner is registered by Federal and State laws to

prescribe, **administer**, or dispense the controlled substances to be distributed to the practitioner; and

- (2) Preparing and leaving with the practitioner a written and signed list of the specific controlled substances distributed.

(c) Physician assistants are not authorized to request, receive, or sign for professional controlled substance samples.

(d) Professional samples of controlled substances received by a practitioner shall be kept in **the** original containers and shall be included in the controlled substance inventory of the practitioner. Such samples shall be dispensed only in conformity with the Federal law governing the dispensing of controlled substances and shall contain all the necessary "caution labels" if so required.

(e) Professional samples shall be dispensed only to a bona fide patient of the practitioner and a record of the dispensing is required.

(f) Sale, trade or purchase of professional samples is prohibited. **Eff APR 15 2000** I (Auth: HRS §§329-31, 353C-2) (Imp: HRS §329-32)

§23-200-20 Procedures for disposal of controlled substances.

(a) Any registrant desiring to dispose of controlled substances that are old, outdated, contaminated or unfit for human consumption may do so in the following manner:

- (1) By delivery to an agent of the department who is authorized to dispose of controlled substances;
- (2) By the destruction in the presence of an authorized agent of the department;
- (3) By delivery to an authorized United States Department of Justice, Drug Enforcement Administration registered disposal firm; or
- (4) By other means as the administrator may determine to assure that the controlled substance does not become available to unauthorized persons.

(b) Any registrant desiring to dispose of their controlled substances may do so by:

- (1) Transferring any unopened containers to another registrant who is authorized to possess those controlled substances;
- (2) Returning the controlled substances to the distributor if he so authorizes; or
- (3) Any means mentioned in subsection (a).

(c) In the event that controlled substances are destroyed or transferred in accordance with subsection (a) or (b), the registrant shall prepare a list of the controlled substances listing each drug, the strength and total dosage unit or volume in duplicate. The original shall be kept with the records of the registrant or the registrant to whom the controlled substances were transferred, and the duplicate forwarded to the department or turned over to the authorized agent disposing of the controlled substance. [Eff **APR 15 2000**] (Auth: HRS §§329-31, 353C-2) (Imp: HRS §329-36)

§23-200-21 Production of controlled substance-bearing plants. (a) It shall be unlawful for any person to engage in or be associated in any manner with or permit another to engage in the cultivation of controlled substance bearing plants or in the production, manufacturing or processing of controlled substances unless such person holds a currently effective certificate of registration issued by the department.

(b) A certificate of registration may be renewed upon the filing of an application on a form furnished by the director, stating either that there has been no changes in the status of matter set forth in the registrant's original application or in a supplementary application, or, if **any** changes have occurred, setting forth such changes.

(c) A certificate of registration shall be renewed annually.

(d) A certificate of registration may be revoked immediately by the director upon any violation by the registrant of any of the terms of the certificate of laws of the United States and this State governing controlled substances.

(e) Disposal of controlled substance-bearing plants. Any controlled substance bearing plant that

is cultivated or any substance from such plant that is produced, manufactured, or processed by the registrant and used for a specific scientific or educational use shall be disposed of as authorized pursuant to section 23-200-20. [Eff **APR 15 2000**] (Auth: HRS §§329-31, 353C-2) (Imp: HRS §329-32, 329-42)

§23-200-22 Confidentiality and access to records. (a) All controlled substance information and records maintained by the narcotics enforcement division, department of public safety, shall be kept confidential except when information is disclosed for law enforcement purposes concerning the use and abuse of controlled substances, educational and statistical reporting purposes, or for the protection of the health and safety of the public.

(b) Any person denied access to controlled substance information and records may seek administrative relief pursuant to the administrative relief procedures provided by the department. [Eff **APR 15 2000**] (Auth: HRS §§329-31, 353C-2) (Imp: HRS §329-54)

§23-200-23 Offenses and penalties. Every person violating any provision of this chapter shall be guilty of the provisions as set forth in sections 329-41 and 329-42, Hawaii Revised Statutes. [Eff **APR 15 2000**] (Auth: HRS §§329-31, 353C-2) (Imp: HRS §§329-41, 329-42, 329-43, 329-46)

§23-200-24 Severability. Should any section, paragraph, sentence, clause, phrase, or application of this chapter be declared unconstitutional or invalid for any reason, the remainder or any other application of said chapter shall not be affected thereby. [Eff **APR 15 2000**] (Auth: HRS §§329-31, 353C-2) (Imp: HRS §329-31)

HAWAII ADMINISTRATIVE RULES

TITLE 23

DEPARTMENT OF PUBLIC SAFETY

SUBTITLE 3

LAW ENFORCEMENT

CHAPTER 201

REGULATED CHEMICALS FOR THE MANUFACTURE OF CONTROLLED
S U B S T A N C E S

§23-201-1	Purpose
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§23-201-1 Purpose. The purpose of this chapter is to set forth rules for the manufacture,

distribution, selling, transferring, or otherwise furnishing for use by any person or the bringing in or receiving from a source outside the State any substance specified in section 329-61, Hawaii Revised Statutes. [Eff **APR 15 2000**] (Auth: HRS §§329-31, 353C-2) (Imp: HRS §§329-31, 353C-2)

§23-201-2 Definitions. As used in this chapter:

"Administrator" means the administrator of the narcotics enforcement division of the department of public safety.

"Authorized state and federal agencies" means any unit of government in this State or in the United States whose major responsibility is to enforce the drug laws of this State or the United States.

"Department" means the department of public safety.

"Director" means the director of the department of public safety or the director's duly authorized agent.

"Ephedrine" the term shall include any synthetic compound, salt, derivative, mixture, or preparation extracted from the plant '(genus) ephedra that contains the substance Ephedrine.

*"Permit" means the regulated chemical certificate of registration issued by the department.

"Permittee" means any person who has a permit to distribute, sell, transfer, or furnish for use, by any person in this state, who brings in or receives from a source outside the State any substance specified in section 329-61, Hawaii Revised Statutes.

"Person" means an individual, corporation, government, or governmental subdivision or agency, business trust, estate trust, partnership, association, or any other legal entity.

"Proper identification" means:

- (1) A valid motor vehicle operator's license, or other official state-issued identification which contains a photograph of the purchaser, the residential or mailing address of the purchaser other than a post office box number, or the tax map key number if no other address is available, the motor

- vehicle number of any motor vehicle owned or operated by the purchaser; or
- (2) A letter of authorization from the business for which any substance specified in section 329-61, Hawaii Revised Statutes, is being furnished, which includes the general excise license number, address and phone number of the business.

"Safe harbor packaging" means a product that is, if not a liquid, sold in packages of not more than three grams of the base ingredient and is packaged in blister packs of not more than two tablets per blister; or, if a liquid, sold in package sizes of not more than three grams of the base ingredient.

"Substance" means any precursor specified in section 329-61, Hawaii Revised Statutes.

[Eff **APR 15 2000**] (Auth: HRS §§329-31, 353C-2)
(Imp: HRS §§329-31, 353C-2)

§23-201-3 Permit requirements. Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes for use by a person in this State or who brings in or receives from a source outside of the State any substance specified in section 329-61, Hawaii Revised Statutes, shall obtain annually a permit for the conduct of that business issued by the department. The application for permit shall be obtained from the department.
[Eff **APR 15 2000**] (Auth: HRS §§329-31, 353C-2)
(Imp: HRS §329-67)

§23-201-4 Annual fees for initial and renewal permits. (a) For each initial and renewal permit, to manufacture for distribution the applicant shall pay a fee of \$100.

(b) For each initial and renewal permit, to conduct business as a wholesale distributor, importer; or exporter, the applicant shall pay a fee of \$75.

(c) For each initial and renewal permit, to conduct business as a retail distributor the applicant shall pay a fee of \$75.

(d) For each duplicate permit, the permittee shall submit a written request and shall pay a fee of

§10. [Eff **APR 15 2000** I (Auth: HRS §§329-31, 353C-2) (Imp: HRS §329-67)

§23-201-5 Persons required to obtain a permit but exempt from fee. (a) The director shall exempt from payment-a fee for registration or re-registration of any official or **agency** of the U.S. Army, Navy, Marine Corps, Air Force,, Coast Guard, Veteran's Administration or Public Health Service who are authorized to procure or purchase regulated chemicals for official use.

(b) Any official, employee, or other civil officer or agency of the United States, State or any political subdivision or agency thereof, who is authorized to purchase regulated chemical, to obtain such substances from official stocks, to dispense, to conduct research, instructional activities, or chemical analyses with such substances, or any combination thereof, in the course of their official duties or employment.

(c) Any person who is exempt from the permit registration fee and may apply to re-register not earlier than sixty days prior to the expiration date of the permit. A fee of \$25 shall be paid for processing of a permit after the expiration date on the permit.

(d) In order to enable law enforcement agency laboratories to obtain and transfer controlled substances for use as standards in chemical analyses, laboratories must obtain annually a registration to conduct chemical analyses. Such laboratories shall be exempted from payment-of any fee for registration.

[Eff **APR 15 2000** I (Auth: HRS §§329-31, 353C-2) (Imp: HRS §329-32)

§23-201-6 Persons exempted from permit requirement. (a) The permit requirement is not required for the following persons under these circumstances:

- (1) Any officer or employee of the Bureau, any officer of the U.S. Bureau of Customs, any officer or employee of the United States Food and Drug Administration, and any other

federal officer who is lawfully engaged in the enforcement of any federal law relating to regulated chemicals or customs, and.-is duly authorized to possess regulated chemicals in the course of their official duties;

(2) Any officer or employee of this State, or political subdivision or agency thereof, who is engaged in the enforcement of any State or local law relating to regulated chemicals and is duly authorized to possess regulated chemicals in the course of their official duties; and

(3) Law enforcement laboratory personnel when acting in the scope of their official duties.

(b) All officials exempted by this section may, when acting in the course of their official duties, possess any regulated chemical and distribute any such substance to any other official who are also exempted by this section and **acting** in the course of their official duties.

(c) All persons specified in section 329-64, 'Hawaii Revised Statutes, are exempt from obtaining a permit under the following circumstances:

(1) Any retail distributor who sells, transfers, or furnishes any over-the-counter-drug product in "safe harbor packaging" in a single transaction to an individual for legitimate medical use that contains pseudoephedrine, norpseudoephedrine, phenylpropanolamine, or an ephedrine combination product; and

(2) Any retail distributor of below threshold quantities of products that 'are not **over-the-counter** drug products in "**Safe** harbor packaging" to an individual for legitimate medical use. The threshold for a retail distributor of a product that is not an over-the-counter drug product in "Safe harbor packaging" is twenty-four grams in a single transaction;

(d) The administrator, upon finding that the continuation of an exemption would not be in the public interest, may **suspend** or revoke a person's

exemption pursuant to procedus set forth in section
23-201-8. [Eff **APR 15 2000**] (Auth: HRS
§§329-31, 353C-2) (Imp: HRS §329-64)

§23-201-7 Time and method of registration. (a) Registration and re-registration fees shall be paid at the time when the application for registration or re-registration is submitted for filing. Payment shall be made in the form of a personal, certified or cashier's check or money order made payable to the **narcotics** enforcement division, department of public safety. Payment made in the form of stamps, foreign currency, or third party endorsed checks will not be accepted. No prorated or full refund will be issued once the certificate is processed. In the event that the application is not accepted for filing or is denied, the payment shall be refunded to the applicant.

(b) Any person who is required to obtain a permit and who has not obtained a permit from the department may apply for a permit at any time. No person required to obtain a permit shall engage in any transactions for which the permit is required, until the application for permit is granted and a permit is issued by the department to such person. All regulated chemical permit applications shall be processed by the department within sixty days after receipt of the completed application, including all requested documentation. In the absence of a national disaster, state emergency, or union strike which would prevent the department from reviewing the permit application, any application pending more than sixty days after receipt of the completed application shall be deemed granted.

(c) Each permit shall expire annually as noted on the permit. Any permittee may apply for renewal not earlier than sixty days prior to the expiration date of their permit. An additional fee of \$25 shall be paid for renewal after the expiration date on the permit.

(d) Failure to obtain a permit from the department will prohibit the **applicant** from engaging in any activity utilizing regulated chemicals designated in section 329-61, Hawaii Revised Statutes.

(e) The administrator may require an applicant to submit such documents or written statements of fact relevant to the application as he deems necessary to determine whether the application should be granted. The failure of the applicant to provide **such** documents or statements within thirty days after being requested to do so shall be deemed to be a waiver by the applicant of an opportunity to present such documents or facts for consideration by the administrator in granting or denying the permit application.

(f) The failure to renew the permit on a timely basis or to pay the applicable fees or payment with a check that is dishonored upon first deposit shall cause the permit to be automatically forfeited.
[Eff: **APR 15 2000** 1 (Auth: HRS §§329-31, 353C-2)
(Imp: HRS §329-67)]

§23-201-8 Modification, transfer, and termination of permits. (a) Any person may apply to modify his permit registration to authorize the handling of additional regulated chemicals by filing a new permit application. In the event of a change of a name or address, the permittee shall submit a letter to the department of public safety, narcotics enforcement division. The letter shall contain the new name or address and the effective date. Such notification shall be within thirty days of such fact. No fee shall be required to be paid for the modification.

(b) Failure to report a change of address will invalidate the permit and require re-registration and the imposition of the \$25 late fee.

(c) No permit issued to a person shall be assigned or otherwise transferred to any other person.

(d) A permit issued to a person will terminate if and when the person dies, ceases legal existence, or discontinues business. The person or the person's representative, shall within thirty days, return the permit to the department. [Eff: **APR 15 2000** 1
(Auth: HRS §§329-31, 353C-2) (Imp: HRS §329-67)]

§23-201-9 Records of transactions. (a) Any manufacturer, wholesaler, retailer, or other person

who sells, transfers, receives, or brings in from outside the State, or otherwise furnishes a substance specified in section 329-61, Hawaii Revised Statutes, or an encapsulating or tableting machine shall keep a record of each transaction for a period of two years after the date of transaction.

(b) Any retail distributor who sells, transfers, or furnishes any above threshold quantity of an **over-the-counter-drug** product that is not in "safe harbor packaging" in a single transaction to an individual that contains pseudoephedrine, norpseudoephedrine, phenylpropanolamine, or an ephedrine combination product must keep records of those transactions. The threshold for a retail distributor of a product that is not an over-the-counter drug **product** in "Safe harbor packaging" is twenty-four grams in a single transaction.

(c) Any manufacturer, wholesaler, retailer or other person who sells, transfers, receives, or brings in from outside the State, or otherwise furnishes any **"over-the-counter-drug"** product containing pseudoephedrine, norpseudoephedrine, phenylpropanolamine, or an ephedrine combination product not in **"safe harbor"** packaging that is above the cumulative threshold of one kilogram for multiple transactions in a month to a retail distributor must keep records of those transactions.

[Eff **APR 15 2000**] (Auth: HRS §§329-31, 353C-2)
(Imp: HRS §329-63)

§23-201-10 Identification and use required for transactions. Prior to distributing, selling, transferring, or otherwise furnishing any substance specified in section 329-61, Hawaii Revised Statutes, to a person in this State every permittee shall require proper identification from the purchaser, a full description of how the substance is to be used, and the signature of the purchaser. The person selling; transferring, or otherwise furnishing any substance specified in section 329-61, Hawaii Revised Statutes, shall sign as a witness to the signature and identification of the purchaser. [Eff **APR 15 2000**]
(Auth: HRS §§329-31, 353C-2) (Imp: HRS §329-62)

§23-201-11 Reporting transactions. (a) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, receives, or brings in from outside the State, or otherwise furnishes a substance specified in section 329-61, Hawaii Revised Statutes, for use in this State shall report to the administrator the following:

- (1) Any regulated transaction involving:
 - (A) An above threshold quantity;
 - (B) Any suspicious or out-of-the ordinary quantity of a chemical listed in section 329-61, Hawaii Revised Statutes, to include exempted items listed in section 329-64, Hawaii Revised Statutes;
 - (C) An uncommon method of payment or delivery; or
 - (D) Any other circumstances that the regulated person believes may indicate that the regulated chemical will be used in violation of this part;
- (2) Any proposed regulated transaction with a person whose description or other identifying characteristics the department has previously furnished to the regulated person;
- (3) Any unusual or excessive loss or disappearance of a regulated chemical listed under section 329-61, Hawaii Revised Statutes, to include exempt items designated in section 329-64, Hawaii Revised Statutes, that is under the control of the regulated person, to include exempt items. The regulated person responsible for reporting a loss in-transit is the supplier;
- (4) Any regulated transaction of a tableting machine or an encapsulating machine; and
- (5) All single entity ephedrine transactions.

(c) The department of public safety shall provide a common reporting form for the substances in section 329-61, Hawaii Revised Statutes, that contains at least the following information:

- (1) Name of the substance;
- (2) Quantity of the substance sold, transferred, or furnished;

- (3) The date the substance was sold, transferred, or furnished;
- (4) The name and address of the person buying or receiving the substance; and
- (5) The name and address of the manufacturer, wholesaler, retailer, or other person selling, transferring, or furnishing such substance.

(c) Any **manufacturer, wholesaler**, retailer, or other person who sells, transfers, or otherwise furnishes any extraordinary quantity of any of the List 2 chemicals designated under section 329-61, Hawaii Revised Statutes, or sells, transfers, or otherwise furnishes any List 2 chemicals through the use of an uncommon method of payment or delivery or under any other circumstances that may make that person believe that the following chemicals could be used in violation of this part by any person in this State, shall report those transactions to the department.

(d) Any manufacturer, wholesaler, distributor, retail distributor or other person who sells, transfers, receives, or brings in from outside the State, or otherwise furnishes any **over-the-counter**-drug product containing pseudoephedrine, norpseudoephedrine, phenylpropanolamine, or an ephedrine combination shall report all "suspicious transactions" to the department.

(e) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any extraordinary quantity of any of the List 2 chemicals designated under section 329-61, Hawaii Revised Statutes, or sells, transfers, or otherwise furnishes any List 2 chemicals through the use of an uncommon method of payment or delivery or under any other circumstances that may make that person believe that the following chemicals could be used in violation of this part by **any** person in this State, shall report those transactions to the department.

(f) Each report submitted to the department shall, whenever possible, be made orally to the department at the earliest practicable opportunity after the regulated person becomes aware of the circumstances involved and as much in advance of the

conclusion of the transaction as possible. A written report shall also be submitted to the department following an oral report within seven **calendar** days.
 [Eff **APR 15 2000** I (Auth: HRS 5329-31, 353C-2)
 (Imp: HRS §329-63)

§23-201-12 Persons exempted from transaction reports. Any person as specified in section 329-64, Hawaii Revised Statutes **is exempt from reporting transactions except as specified in section 23-201-11¹.**
 [Eff **APR 15 2000**] (Auth: HRS §§329-31, 353C-2)
 (Imp: HRS §329-64)

§23-201-13 Reporting theft and loss. (a) The theft or loss of any substance specified in section 329-61, Hawaii Revised Statutes, to include exempted items listed in section 329-64 Hawaii Revised Statutes, discovered by the permittee shall be reported in writing to the department within three calendar days of the receipt of the actual knowledge of the discrepancy.

(b) The report shall include the name of the common carrier or person who transports the substance, **and the date of the shipment of the substance.**
 [Eff **APR 15 2000**] (Auth: HRS §§329-31, 353C-2)
 (Imp: HRS §329-66)

§23-201-14 Revocation and suspension of certificate of registration. (a) A certificate of registration issued under section 329-33, Hawaii Revised Statutes, may be denied, suspended, or revoked by the department for any of the reasons cited in section 329-34, Hawaii Revised Statutes.

(b) The department may suspend or deny any registration simultaneously with the institution of proceedings under section 329-34, Hawaii Revised Statutes, or where it finds there is danger to the public health and safety which warrants this action.

(c) An order to show cause served upon the applicant or registrant shall contain a statement of the basis for the action and shall call upon the applicant or registrant to appear before the

department at a time and place not less than thirty days after the service of the order.

(d) Failure of a registrant to respond to the order to show cause shall result in an **automatic** revocation, suspension or denial of the certificate of registration.

(e) The proceedings will be conducted in accordance with section 329-35, Hawaii Revised Statutes. [Eff **APR 15 2000**] (Auth: HRS §§329-31, 353C-2) (Imp: HRS §§ 329-34, 329-35)

§23-201-15 Confidentiality of information and records. (a) All information and records required pursuant to part VI of chapter 329, Hawaii Revised Statutes, shall be kept confidential. Disclosure of information and records to authorized state and federal agencies is permissible.

(b) Any person denied access to the information and records may appeal the denial in accordance with chapter 92F, Hawaii Revised Statutes. [Eff **APR 15 2000**] (Auth: HRS §§329-31, 329-68, 353C-2) (Imp: HRS §329-68)

§23-201-16 Offenses and penalties. Every person violating any provision of this chapter shall be subject to the provisions as set forth in sections 329-62, 329-65, 329-67 and 329-68, Hawaii Revised Statutes. [Eff **APR 15 2000**] (Auth: HRS §§329-31, 353C-2) (Imp: HRS §§329-62, 329-65, 329-67, 329-68)

§23-201-17 Severability. Should any section, paragraph, sentence, clause, phrase, or application of this chapter be declared unconstitutional or invalid for any reason, the remainder or any other application of said chapter shall not be affected thereby. [Eff **APR 15 2000**] (Auth: HRS §§329-31, 353C-2) (Imp: HRS §§329-31, 353C-2)

DEPARTMENT OF PUBLIC SAFETY


Subtitles 1, 2, 3 of Title 23, Hawaii Administrative Rules, on the Summary Page dated March 22, 2000, was adopted on March 22, 2000, following a public hearing held on March 10, 2000, after public notice was given in the Midweek on January 31, **2000**.

The adoption of subtitles 1, 2, 3 of title 23 . shall take effect ten days after filing with the Office of the Lieutenant Governor.



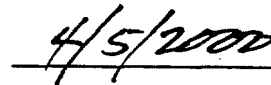
Ted Sakai, Director
Department of Public
Safety

APPROVED:



Benjamin J. Cayefano
Governor
State of Hawaii

Dated:



APR 05 2000

Filed

APPROVED AS TO FORM:



Deputy Attorney General.